

RESOLUTION NO. 2008-75

A RESOLUTION OF THE LODI CITY COUNCIL
AMENDING THE CITY OF LODI DRUG FREE
WORKPLACE POLICY AND THE DRUG FREE
WORKPLACE PROCEDURE TO MEET DEPARTMENT
OF TRANSPORTATION REQUIREMENTS

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WHEREAS, the City of Lodi previously adopted a Drug Free Workplace Policy and Procedure on May 1, 1995, and amended it on July 18, 2007; and

WHEREAS, due to Federal Transportation Administration requirements applying to employees who operate or maintain Department of Transportation funded equipment and machinery, an amendment to that policy is required.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby amend the City of Lodi Drug Free Workplace Policy and the Drug Free Workplace Procedure to meet Department of Transportation requirements, as shown on Exhibit A and B attached hereto and made a part of this Resolution; and

BE IT FURTHER RESOLVED that the effective date of this policy shall be May 8, 2008.

Dated: May 7, 2008

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I hereby certify that Resolution No. 2008-75 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 7, 2008, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Katzakian,
and Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


City Clerk

CITY OF LODI

ADMINISTRATIVE POLICY AND PROCEDURE MANUAL

SUBJECT: DRUG-FREE WORKPLACE - *Policy*

DATE ISSUED: May 7, 2008

SECTION D

REFERENCE: Drug Free Workplace Act of 1988;
Americans With Disabilities Act of 1990; The
Rehabilitation Act of 1973.

SECTION 1: PURPOSE

City of Lodi is committed to protecting the safety, health and well being of all employees and other associated individuals in our workplace. We recognize that alcohol abuse and drug use pose a significant threat to our goals. We have established a drug-free workplace program that balances our respect for individuals with the need to maintain an alcohol and drug-free environment.

- This policy recognizes that employee involvement with alcohol and other drugs can be very disruptive, adversely affect the quality of work and performance of employees, pose serious health risks to users and others, and have a negative impact on productivity and morale.
- **As** a condition of employment, this organization requires that all employees adhere to a strict policy regarding the use and possession of drugs and alcohol.
- This organization encourages employees to voluntarily seek help with drug and **alcohol problems.**

SECTION 2: POLICY STATEMENT

It is a violation of our drug-free workplace policy to manufacture, use, possess, distribute, trade, and/or offer for sale alcohol, illegal drugs or intoxicants. Our drug-free workplace policy is intended to apply whenever anyone is representing or conducting business for the organization. Therefore, this policy applies during all working hours, lunch hours and whenever conducting business or representing the organization, while on paid standby, on or off City property including vehicles. Any individual who conducts business for the organization, is applying for a position, or is conducting business on the organization's property is covered by our drug-free workplace

policy. Our policy includes, but is not limited to executive management, managers, supervisors, full-time employees, part-time employees, off-site employees, contractors, volunteers, interns and applicants.

Drug and alcohol consumption on and/or off the job can adversely affect job performance and employee/public safety. The City respects the privacy of its employees and contractors unless involvement with drugs and/or alcohol off the job adversely affects job performance and employee/public safety.

SECTION 3:

COMPLIANCE

The U.S. Department of Transportation DOT has published 49 CFR Part 29, implementing the Drug-Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA. The (DOT) adopted 49 CFR Part 40 (Revised), which outlines procedures for transportation workplace drug and alcohol testing programs. This Policy incorporates these federal requirements for employees when performing safety-sensitive functions, as well as other provisions as noted.

The Federal Transit Administration (FTA) of the U.S. Department of Transportation 49 CFR (Code of Federal Regulations) ~~Part~~ 655 and 382 mandates urine drug testing and breathalyzer alcohol testing, for employees performing safety-sensitive functions. The regulation prevents the performance of safety-sensitive functions when there is a positive test result or test refusal. **A safety-sensitive function is:**

- 1) Maintenance personnel, who perform various repairs to revenue vehicles (including repairs, overhaul and rebuilding)
- 2) Employees with a commercial driver's license that will operate a revenue service, or non-revenue service DOT funded transit vehicle (includes the operation of the Lifts or anyone who assists passengers to assure they are secured in the vehicles).
- 3) Drivers operating a revenue service vehicle, including when not in revenue service.
- 4) Dispatch personnel and supervisors who control the movement of any revenue service vehicle.

Federal Contractors and grantees must certify that they will provide drug-free workplaces as a pre-condition to receiving a contract or grant from any Federal agency. Failure to comply with the requirements of the Drug-Free Workplace Act may result in the following sanctions:

- A. suspension of payments under the grant;
- B. termination of the grant; or

C. debarment from any grant award from any Federal agency for a period up to five (5) years.

Such penalties may be applied to contractors/grantees who have made false certifications of compliance with the Act.

SECTION 4:

COMPLIANCE OF EMPLOYEES

All employees shall agree to abide by this condition of employment and shall notify the City of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

In those instances where City employees, who **are** employed under Federal contract or grant, are convicted of criminal drug statutes violations occurring in the workplace, the City shall notify the grantor agency within ten (10) days after receiving notice from such employees or otherwise receiving actual notice of such convictions.

The City of Lodi shall require every covered employee who performs a safety-sensitive function as described in the FTA regulations **Part** 655 to submit to a pre-employment, post-accident, random, reasonable suspicion, return-to-duty or a follow-up drug and alcohol test as described in this policy. The City shall not permit any employee who refuses to submit to such tests to perform or continue to perform any safety-sensitive functions and is subject to disciplinary actions up to and including termination.

Any employee (safety sensitive or non-safety sensitive) who refuses to comply with a request for testing, who fails to remain readily available for post-accident testing, who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration or substitution, shall be removed from duty immediately. Refusal can include an inability to provide a specimen or breath alcohol sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test.

SECTION 5:

ENFORCEMENT

In conjunction with Human Resources, department directors, managers, and supervisors **are** responsible for reasonable enforcement of this policy and the Drug-Free Workplace Procedure.

SECTION 6:

SPECIFIC APPLICATIONS

Driver's License: Employees operating vehicles and equipment requiring the possession of a specified class, certificated or endorsed driver/operator license by the California Department of Motor Vehicles, or any other federal or state agency, may be subject to drug/alcohol screening in order to obtain and maintain such licensing

Accidents: Employees directly involved in an accident, including vehicular accidents, or who may have been involved in the sequence of events leading up to **an** accident, is subjected to testing as part of the accident investigation process. Notwithstanding laws to the contrary, the supervisor will determine whether employees should be directed for drug/alcohol testing based upon reasonable suspicion.

SECTION 7:

Opportunities of Rehabilitation

The City of Lodi is committed to providing reasonable opportunities of rehabilitation to those employees with a drug or alcohol problem in accordance with the provisions of federal and/or state law.

An employee who has a drug and/or alcohol abuse problem and has not been selected for reasonable cause, random or post-accident testing or has not refused a drug or alcohol test or is not involved in disciplinary proceedings, may voluntarily refer her or himself to the Human Resources Manager or Internal Services Director, who will refer the individual to the City's Substance Abuse Professional at the expense of the employee. The SAP will evaluate the employee and make specific recommendation regarding the appropriate treatment. When an employee voluntarily refers her or himself for treatment, the employee may be eligible for sick leave and disability benefits. Employees will be allowed to take accumulated vacation time or may be eligible for unpaid time off to participate in any rehabilitation program at the employee's expense. In addition, the City of Lodi's voluntary Employee Assistance Program (EAP) is available to assist employees who seek help for alcohol or drug problems. Employees are encouraged to contact the EAP directly.

Supervisors/managers may refer an employee to the EAP for reasonable suspicion of drug abuse. Supervisors **are** encouraged to refer employees to the EAP for intervention. EAP services are confidential and supervisory referred employees are requested to sign a release of information for attendance purposes if sessions **are** scheduled during working hours.

SECTION 8:

PRESCRIPTION MEDICATION LEGAL DRUGS

A legally prescribed drug means that an individual has **a** prescription or other written approval from a physician for the use of a drug in the course of medical treatment. The misuse of legal drugs while performing transit business is prohibited at all times. Any employee taking any medication with a warning label will be required to provide the following:

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills or judgment may be adversely affected must be reported to supervisory personnel. Medical advice should be sought, as appropriate, while taking such medication and before performing work-related duties.

An employee taking prescribed drugs which may interfere with safe work performance is required to provide written documentation from the prescribing physician indicating the level of interference with job performance. The prescription or approval must include the patient's name, the name of the substance, quantity/amount to be taken, the period of authorization and physician's signature that the employee may continue to perform safety-sensitive functions while taking such medication

The employee's immediate supervisor or department head shall determine on a case-by-case basis the employee's ability to perform employment responsibilities in conjunction with Human Resources. Failure to notify a supervisor may result in disciplinary action in accordance with City policy and procedure. An employee may be required to provide a statement from a licensed physician, indicating when the employee is able to work safely, or any limitations she/he may have while taking the prescribed medication.

SECTION 9:

PRE-EMPLOYMENT DRUG TESTING

As an employer the City is required to verify previous violations of DOT drug and alcohol regulations within the last two years of employment with a DOT regulated agency or employer.

An employer must obtain and review the information listed below from any DOT-regulated employer the employee performed safety-sensitive functions for in the previous two years. The information must be obtained and reviewed prior to the first time an employee performs safety-sensitive functions. If not feasible, the information should be obtained no later than thirty (30) days after the first time an employee performs safety-sensitive functions. The information obtained must include:

1. Information of the employee's alcohol test in which a breath alcohol concentration of 0.04 or greater was indicated.
2. Information of the employee's controlled substance test in which a positive result was indicated.
3. Any refusal to submit to a required alcohol or controlled substance test. (including verified adulterated or substituted drug test results)
4. Other violations of DOT agency drug and alcohol testing regulations.

Applicants will be asked whether he or she has tested positive, or refused to test on a pre-employment drug or alcohol test while trying to obtain safety sensitive transportation work from an employer covered by a DOT agency during the past two years. If applicant admits that he or she had a positive test or refusal to test, the applicant will not be eligible for the position. Job offers made by the City of Lodi are contingent upon the successful completion of a drug and/or alcohol screening. Testing for temporary hires will be evaluated on an individual basis by classification.

CITY OF LODI

ADMINISTRATIVE POLICY AND PROCEDURE MANUAL

SUBJECT DRUG-FREE WORKPLACE - **Procedure**

DATE ISSUED: May 7, 2008

SECTION: D

REFERENCE US DOT (FTA) **49** CFR Part **40**;
49 CFR Part **655**;
49 CFR Part **382**;
49 CFR ~~Part~~ **29**;
Drug Free Workplace Act of **1988**;
Americans With Disabilities Act of **1990**;
The Rehabilitation Act of **1973**;
Rules **for** Personnel Administration;

SECTION 1: **PURPOSE**

The purpose of this procedure is to provide guidance to employees, supervisors, and managers in the recognition of drug/alcohol abuse by employees, and of the process by which to address the issues raised by such use.

SECTION 2: **SUPPORT SERVICES/EDUCATION/TRAINING**

All employees may receive educational information and training regarding the detection and deterrence associated with the use of illegal drugs and alcohol use. Safety Sensitive employees may receive training annually. For immediate support and guidance employees may contact:

SAMHSA'S
Center for Substance Abuse Treatment

1-800-662-HELP
(4357)

All

Employee Assistance Program

(209)333-6704

Please contact Human Resources for
additional information

Substance Abuse Professional

SECTION 3:

REASONABLE SUSPICION

Reasonable Suspicion is cause based on subjective evidence and objective facts sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs or alcohol to the degree the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.

It is the responsibility of the supervisor to gather specific facts and rational inferences from these facts which warrant reasonable suspicion that the particular employee is under the influence of drugs or alcohol. Co-workers have the responsibility to notify supervisors or Human Resources immediately to report suspicious behavior. In all cases of suspicion of drug/alcohol abuse, all procedures shall be conducted under the auspices of the Human Resources Division.

Reasonable suspicion may be established by, but not limited to any of the following:

- A. Slurred speech;
- B. Alcohol odor on breath;
- C. Unsteady walking and movement;
- D. An accident involving City property;
- E. Physical or verbal altercation;
- F. Declining work performance;
- G. Possession of alcohol or unauthorized drugs;
- H. Information from a co-worker, City employee, or member of the public regarding *an* employee's performance level.

These are not the sole indicators for determining reasonable suspicion. The number of reasonable suspicion indicators **and** amount of evidence supporting each indicator will determine whether there is reasonable suspicion to search or compel a test. Consequently, any one indicator above or in combination with other indicators will not necessarily always indicate reasonable suspicion. Each situation will have to be individually examined, obtaining as much evidence of impairment as possible.

SECTION 4:

SUPERVISORY RESPONSIBILITIES

Supervisors must distinguish between deficient employee behaviors that *are* ongoing or repeated in nature, and those that present immediate indication of drug/alcohol influence.

A. Ongoing Behavior:

A supervisor observing an employee demonstrating the above indicators and/or exhibiting ongoing behavior which could cause reasonable suspicion of drug/alcohol abuse shall contact the Human Resources Division immediately and may:

1. Counsel the employee regarding **areas** of declining work performance and recommend the employee utilize the Employee Assistance Program for intervention and rehabilitation.

2. Document the behavior which has given rise to the suspicion of substance abuse;

3. Inform the appropriate higher level supervisor/manager of the supervisor's observations, interventions, and if applicable, intent to recommend substance abuse testing.

Drug/alcohol testing is used as a last resort after an employee refuses **an** EAP referral or EAP recommendations are rejected.

After a supervisor has received training on drug/alcohol abuse testing and referral, and taken all measures outlined above, he/she may direct an employee to take a test in accordance with the procedures outlined in Attachment A.

B. Immediate Presentation of Indicators:

Supervisors may request an employee to submit to a drug /alcohol testing when there is a reasonable suspicion that an employee is under the influence of drugs or alcohol. When there is reasonable suspicion that an employee is under the influence of drugs or alcohol, the supervisor is required to prevent the employee from engaging in further work and advise the employee to remain at the work site until transportation arrangements can be made. Such employee shall be transported to the appropriate physician/laboratory for drug/alcohol testing by his/her most available supervisor. Upon completion of the sample collection, transportation to the employee's residence shall be provided by the supervisor or a member of the employee's family. Employees who insist on driving and who may be under the influence of drugs or alcohol are subject to arrest by a peace officer.

Employees will not be permitted to work until the results of the test have been determined. Upon receipt of the laboratory analysis results, employees will be notified. If a test result **is** positive, the time the employee was absent from work between the specimen collection and notification of results shall be unpaid. If the test result **is** negative, **then** the interim time period shall be considered administrative leave with pay.

Supervisors requesting an employee to submit to a drug/alcohol test shall document, in writing within **24** hours, the facts constituting reasonable suspicion that the employee is intoxicated or under the influence of **drugs**.

The City may search, without employee consent, all areas and property in which the City maintains control or joint control with the employee including, but not limited to, City vehicles, desks, containers, files, lockers and storage facilities. Whenever possible, prior to a search for drugs or alcohol, an attempt shall be made to contact the employee at work or at home to allow the employee to be present during the search. When it is not possible reach the employee or the employee is not present within a reasonable period of time (i.e. not later than **45** minutes), the search shall be conducted by a minimum of two people - the supervisor conducting the search and an observer such as a second supervisor, a law

enforcement officer or a neutral observer. For Police Officers, searches **of** lockers or an assigned storage space shall be conducted as provided by Government Code Section 3309. Otherwise the City may notify the appropriate law enforcement agency that an employee may have illegal drugs in his/her possession or in an area not jointly or fully controlled by the City.

Supervisors shall not physically search the person of employees, nor shall they search the personal possessions of employees. Supervisors shall notify the appropriate Department Head or designee when they have reasonable suspicion that an employee may have illegal drugs or alcohol in his or her possession, including areas such as parking areas, break rooms, etc. If the Department Head or designee concurs that there is reasonable suspicion of possession, then he/she may notify the appropriate law enforcement agency.

SECTION 5:

CONTROLLED SUBSTANCE (DRUGS) AND/OR ALCOHOL TESTING OF EMPLOYEES

There shall be no random or general testing except as required by federal and/or state law. The City of Lodi shall require every covered employee who performs a safety-sensitive function as described in the FTA regulations ~~Part~~ 655 to submit to a pre-employment, post-accident, random, reasonable suspicion, or a follow-up drug and alcohol test as described in this policy.

An employee may be **asked** to submit to a urine test to determine the **use** and/or presence of controlled substances. Alcohol testing shall be conducted by using an evidential breath testing device.

Should an employee be directed to undergo drug/alcohol testing the following provisions shall apply:

- A. All testing shall be performed by a National Institute of Drug Abuse (NIDA) certified facility, determined by the City.
- B. The initial testing shall use the radioimmunoassay (RIA) screening process. If the results are positive, the results will confirmed by the gas chromatography/mass spectrometer (GC/MS) method.
- C. Alcohol testing is only permitted just before, during, and just after the performance of safety-sensitive duties.
- D. If the initial test result is positive and the confirmation test result is negative, the overall screening is considered negative.
- E. In the event of a positive result, the specimen shall be retained and preserved by the laboratory for a minimum of one year. If during this period the employee requests, the

specimen will be forwarded to another laboratory for independent testing. The cost of this additional handling and testing shall be borne by the employee.

F. If the employee tests positive for a substance(s) with a medically recognized usage as a prescription drug without having disclosed such usage before the test, the employee shall be given the opportunity to produce a prescription for the drug or a physician's (or dentist's) statement relative to the need for such a drug. The said prescription must be dated before the date of the drug screen.

G. In the case of marijuana, the level of the positive test is set high enough to exclude people who have had a casual encounter with the drug, such as being in a room where it is smoked by someone else. A test threshold (NG/ML) for THC - the active substance in marijuana - is used as cutoff, which ensures that someone who registers positive has indeed ingested such a substantial amount of that drug that it precludes inadvertent exposure.

H. The results of the drug screening shall be reviewed by a Medical Review Officer (MRO) for interpretation and validation. The medical provider shall inform the employee and Human Resources of the results of the screening.

* Testing is based on DOT minimum thresholds in **49 CFR Part 40**.

SECTION 6:

CONFIDENTIALITY

Specific treatment services provided by the *SAP* and/or **EAP** provider are confidential and are not released without the employee's authorization. Specific information shared with **SAP** or **EAP** staff is confidential unless required by law for child abuse or threats of bodily harm.

Laboratory reports or test results shall be maintained by the medical provider. Any written records of the test results shall not be placed in an employee's personnel file, but shall be maintained in a separate confidential file unless used to support a disciplinary action. The confidential file shall be maintained by the Human Resources Division. The reports or test results may be disclosed to City management and/or supervisory staff on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without the employee's consent, may also occur when the information:

- A. requires immediate contact to the employee
- B. is compelled by law or by judicial or administrative process;
- B. has been placed at issue in a formal dispute between the City of Lodi and the employee;
- C. is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

As an employer the City is required to verify previous violations of DOT drug and alcohol regulations within the last two years of employment with DOT regulated agency or employer. Former employees seeking employment with another DOT regulated

agency shall authorize the City in writing to provide the required drug and alcohol testing information to that agency.

An employer must obtain and review the information listed below from any DOT-regulated employer the employee performed safety-sensitive functions for in the previous two years. The information must be obtained and reviewed prior to the first time an employee performs safety-sensitive functions. The information obtained must include:

1. Information of the employee's alcohol test in which **a** breath alcohol concentration of 0.04 or greater was indicated.
2. Information of the employee's controlled substance test in which **a** positive result was indicated.
3. Any refusal to submit to **a** required alcohol or controlled substance test. (including verified adulterated or substituted drug test results)
4. Other violations of DOT agency drug and alcohol testing regulations.

SPECIMEN COLLECTION PROCEDURE

When an individual is directed by the City to the medical provider for drug/alcohol screening, the following procedure is observed

1. The screening procedure ~~is~~ explained to the individual and any questions answered by the medical provider.
2. The individual is asked to provide all pertinent information to the medical provider and sign **a** waiver authorizing release of the results to the City of Lodi.
3. The medical provider conducts the screening in a manner so **as** to prevent tampering and ensure confidentiality. Such procedure shall include, but not be limited to identification verification, removal of all unnecessary garments and bags prior to collection, washing hands, and temperature testing.
4. The specimen shall be sealed, labeled, and initialed by the medical provider and the employee, without the container leaving the employee's presence.
5. An employee will be selected at random each quarterly draw to complete a portion of **a** Collection Audit Checklist form with Human Resources.

COLLECTION AUDIT CHECKLIST

BASIC INFORMATION

Step-1 Verify that collectors are trained and certified Yes _____ No _____

Step-2 Verify that collectors have proof of Proficiency demonstration Yes _____ No _____

Each collector must demonstrate proficiency in collections under this part by completing five consecutive error free mock collections. The five mock collections must include **two** uneventful collection scenarios, one insufficient quantity of urine scenario, one temperature out of range scenario, and one scenario in which the employee refuses to sign the CCF and initial the specimen bottle tamper evident seal.

Step-3 Does the clinic know who to contact at the division? Yes _____ No _____

An employer must provide to collectors the name and telephone number of appropriate **DER** to contact about any problems or issues that may arise during the testing process.

PREPARATION OF RESTROOM

Step-1 Did the collector properly secure all water sources and add bluing agent to the toilet?

Step-2 Did the collector ensure that there are no foreign substances/items in the restroom prior to allowing the donor to go inside restroom? Yes _____ No _____

Step-3 Did the collector explain the basic procedures to the donor or show the donor the instructions on the back of the CCF? Yes _____ No _____

COLLECTION OF URINE SAMPLE

Step-1 Did the collector require to see a valid ID from donor? Yes _____ No _____

Step-2 Did the collector require the donor to empty pockets? Yes _____ No _____

Step-3 Did the collector require the donor to remove hat, jacket? Yes _____ No _____

Step-4 Did the collector require the donor to wash and dry hands? Yes _____ No _____

Step-5 Did the collector let the donor pick the cup to ~~be~~ **used** for collection? Yes _____ No _____

Step-6 Did the collector open the cup in front of the donor? Yes _____ No _____

Step-7 Did the collector instruct the donor to provide at least 45ml of urine **and** to come out of the restroom within **4** minutes? Yes _____ No _____

Step-8 Did the collector ensure that the donor **does** not take anything other than the collection cup with them into the restroom? Yes _____ No _____

Step-9 Did the collector instruct the donor not to flush the toilet? Yes _____ No _____

Step-10 Did the collector read the temp strip and mark it on the CCF? Yes _____ No _____

Step-11 Did the collector pour the urine into two vials in front of the donor? Yes _____ No _____

Step-12 Did the collector write the date on the seal strips? Yes _____ No _____

Step-13 Did the collector have the donor initial the seal strips directly on the vials? Yes _____ No _____

Step-14 Did the collector sign all appropriate boxes accordingly on the CCF? Yes _____ No _____

Step-15 Did the collector have the donor sign the CCF (step 5) and did the collector verify the name written on the CCF? Yes _____ No _____

Step-16 Did the collector seal up the specimen in the pouch correctly? Yes _____ No _____